*** THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO. 3597 of 2005

% 04-08-2005

Bhaskara Rama Charyulu and others……..petitioners

And

$ The District Collector, Kakinada and others…. respondents

! COUNSEL FOR PETITIONER: MR.T.V.S.PRABHAKAR

^ Counsel for the Respondents: Government Pleader for Revenue.

< Gist:

> Head Note:

? CITATIONS:

1. 1983 ALT (1) 233 (FB)
2. 2005(1) ALD 517
3. AIR 1980 SC 319
4. 2004(1) DT (SC) 848
5. AIR 1979 AP 159

6. 1999(3) ALD 42
7. 2004(1) DT (SC) 848
8. (1996) 2 SCC 549
9. (1997) 9 SCC 78

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.3597 of 2005

DISPOSED OF ON 4-8-2005

Between:

Bhaskara Rama Charyulu and others……..petitioners

And

The District Collector, Kakinada and others…. respondents

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.3597 of 2005

O R D E R :

1. This writ petition has been filed by the petitioners with a prayer to issue a Writ of Mandamus declaring the action of respondents 1 and 2 in issuing the notification under section 4(1) of the Land Acquisition Act to acquire the land to an extent of Ac.3-27 cents in Survey No.57/2 of Madiki Village, Alamuru Mandal, East Godavari District as illegal, arbitrary and malafide.

2. The petitioners are archakas of Sri.Kodanda Ramaswamy Vari Temple-4th respondent and doing service in the temple and eaking out their livelihood by cultivating the temple land bearing S.No.52/2 of Madiki village, Alamuru Mandal, East Godavari District. The extent of land cultivated by each of the petitioners is not of much relevant for the purpose of disposal of this writ petition. The petitioners earlier filed W.P.No.28190 of 1995 apprehending high-handed dispossession from the temple lands which were given to their ancestors for meeting the expenses of Nitya Dhoopa Nivedyam. The said writ petition ended in dismissal on 20.8.2004. The petitioners assailed the order passed in W.P.No.28190 of 1995 by filing W.A.No.1761 of 2004. The said appeal came to be disposed of with a direction to the respondents therein that the petitioners possession be not disturbed otherwise than in accordance with law and in case there would be any proposal to acquire the land in question, it would be open for the petitioners to establish their title by appearing before the competent authority and challenge the proceedings in

accordance with law. The District Collector, E.G.District-1st respondent issued proceedings acquiring the land to an extent of Ac.3-27 cents by invoking the urgency clause u/s 17(4) of Land Acquisition Act and thereby dispensing with the enquiry under section 5-A of the Act. According to the petitioners, the acquisition of the land is only to put them in trouble and the acquisition proceedings are purely motivated and are not bonafide. They also pleaded in the writ petition that the lands of 4th respondent-temple in S.Nos.171/A and B admeasuring Ac.19-19 cents are very much available for the proposed public purpose and the authorities without considering the factual and legal aspects and the objections raised by them from the year 1995 proceeded with the acquisition of land in possession of the petitioners and, therefore, the said action is arbitrary and malafide.

3. The beneficiaries have come on record as R5 to R8 as per orders in WPMP.No.6510 of 2005, dated 15.3.2005. It is stated in the counter affidavit of R1 to R4 that the land in S.No.57/2 admeasuring Ac.3-27 cents of Madiki village of Alamuru Mandal, East Godavari District including other lands situated in Veeravaram village of Kadiam Mandal are registered in the name of deity-4th respondent-temple. The petitioners are not owners of the land. Proposals have been initiated to acquire the land as there is dire necessity for house sites to the weaker sections of Madiki village who are residing on road margins by erecting thatched sheds in most unhygienic conditions. The draft notification under section 4(1) and draft declaration under section 6 of the L.A.Act by invoking urgency clause u/s 17(4) of the L.A.Act were approved by the 1st respondent and published in the local daily and in the gazette. Notices under sections 9(1) and 10, dated 21.2.2005 proposing award enquiry on 9.3.2005 were published in the locality. There is no political reason for acquisition of the said land. The only reason for proposing the said land for acquisition is that the beneficiaries are residing on either side of the road leading from Madiki village to Veeravaram village and the proposed land in R.S.No.57/2 is adjoining the present occupied road margin. The 1st respondent has approved draft notification u/s 4(1) of the Act invoking urgency clause under section 17(4) of L.A.Act because the weaker sections who are seeking house site pattas are residing on the road side since a decade and they could not be provided with the house sites due to legal hurdles created by the petitioners. The tenants or interested persons on the land cannot question the urgency clause invoked by the LAO as the acquisition is

intended for public purpose, viz., providing of house sites to the weaker sections.

4. Heard learned counsel appearing for the petitioners, learned Government Pleader for Land Acquisition for respondents 1 to 3, learned counsel appearing for 4th respondent-temple and counsel appearing for respondents 5 to 8.

5. Learned counsel appearing for the petitioners submits that in the facts and circumstances of the case the very invocation of urgency clause u/s 17 of the Act is unsustainable. He laid emphasis on S.17 of the Act in support of his submission that invoking urgency clause is not an empty formality and some material should be there before the competent authority who should satisfy himself relating to invocation of urgency clause. He would further submit that the invocation of urgency clause under Section 17(4) in the circumstances of the case is nothing but to deprive the right of the petitioners to raise objection as to the very acquisition of land.

6. Learned counsel appearing for the petitioners in elaborating his arguments referred to various provisions of the act to convince the court that dispensing with the enquiry under section 5-A has very serious consequences and the said enquiry cannot be dispensed with on mere existence of urgency. He would further contend that the concerned authority has to apply its mind with regard to the urgent need, which requires exclusion of enquiry under section 5-A of the Act by invoking the power under section 17(4) of the Act. In support of his submissions, he placed reliance on the decision or our High Court in YADAIAH v. GOVT. OF A.P., CHATAPALLI NADIPI SUBBNARAYUDU V. DISTRICT COLLECTOR, KURNOOL and the decisions of Supreme Court in STATE OF PUNJAB V. GURDIAL SINGH and NATIONAL INSURANCE CO. LTD. V. CHALLA BHARATHAMMA AND OTHERS.

7. In the first cited decision, it has been held that whenever Sec.5-A enquiry is dispensed with although for providing house sites for Harijans, the court must examine whether the material before the authority would reasonably justify the

dispensing with Sec.5-A enquiry and whether the authority has honestly applied its mind to those matters and excluded all irrelevant considerations. It is equally important for the statutory authorities to note that the statutory provisions of Sec.17(1) and 17(2) of the Act do not authorize them to dispense with Sec.5-A enquiry as a routine matter. In the second cited decision, this court set aside the order dispensing with Sec.5-A enquiry on the ground of non-deposit of the compensation amount before taking possession of the land and not taking possession of the land within three months as mandated u/s 17(5)(A) of the Act. Para 13 of the judgment reads as under:

> " 13. In the light of the material placed before this Court and on careful scrutiny of the stand taken by respondent No.2 in the counter affidavit and also the contents of the notification issued under Section 4(1) of the Act, this Court is specified that the invocation of the urgency clause under Section 17(4) of the Act definitely cannot be sustained. Apart from this aspect of the matter it is no doubt brought to the notice of this Court that possession also was not taken within 3 months as specified by Section 17(5)(A) of the Act. Further, it was also brought to the notice of this Court that the deposit required to be made in case of invocation of urgency clause also had not been complied with. In the light of the reasons, which had been narrated in detail in the affidavit filed in support of the writ petition, this Court is of the considered opinion that dispensing with Section 5-A enquiry is totally unjustifiable. No doubt, the counsel representing the respondents had placed reliance on the decision of Division Bench in N.AMORAYYA v. DIST. SOCIAL WELFARE OFFICER which is distinguishable on facts."

In the third cited decision, the Supreme Court held that bad faith which invalidates the exercise of power – sometimes called colourable exercise or fraud on power and often times overlaps motives, passions and satisfactions – is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous consideration, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, the Court calls it a colourable

exercise and is undeceived by illusion. It is further observed that it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing land acquisition authorities should not, having regard to Arts.14 and 19, burke an enquiry under S.17 of the Act. In the last cited decision, the Supreme Court held that right of representation and hearing contemplated under Section 5-A of the Act is a very valuable right of a person whose property is sought to be acquired and he should have appropriate and reasonable opportunity of persuading the authorities concerned that the acquisition of the property belonging to that person should not be made. It is further held that if the appropriate Government decides to take away this minimal right then its decision to do must be based on materials on record to support to same and bearing in mind the object of Section 5-A.

8. Per contra, learned Government Pleader for Land Acquisition contends that the authorities having taken note of urgent need to provide shelter to the persons who have been residing on road margins invoked the provisions of Sec.17 of the Act and dispensed with the enquiry under section 5-A of the Act and therefore the action of the authorities in dispensing with Sec.5-A enquiry cannot be found fault. Learned counsel appearing for respondents 5 to 8 submits that the petitioners successfully prevented the authorities from initiating the proceedings for acquisition of the land to provide shelter to the downtrodden people for a period of nearly nine years by filing W.P.No.28190 of 1995 and obtaining stay of all further proceedings and ultimately, the said writ petition ended in dismissal on 12.8.2004. He would further submit that the petitioners being only cultivators of the land owned by 4th respondent-temple cannot be permitted to raise any objections with regard to the acquisition of land for public purpose. It is also submitted by him that the decision on the question of urgency is an administrative one and it cannot be interfered by the court unless it is shown to be a colourable exercise of power. In support of his submissions, reliance has been placed on the decision of our High Court in JANAPAREDDY VENKATESWARA RAO v. DISTRICT COLLECTOR, ELURU. I deem it appropriate

to refer para 4 of the cited decision and it is thus:

> " 4. The land is acquired for the purpose of providing house sites by the State Government. The writ petitioner has set out in the affidavit certain extents of land belonging to the S.T.V.N.High School and also Smt.Kilambi Seethalakshmi wife of Ramavataram. I do not think it necessary to dilate on this contention. It is well settled by the decisions of this Court in WP.No.2923 of 1999, dated 16-2-1999 and W.A.No.223 of 1999 dated 25-2-1999, that suitability of a land is not a justiciable issue unless in a given case it is shown that the choice of the land by the State and its authorities is tainted by factual malafide or is done wantonly by the State authorities under the garb of exercise of eminent domain power. That is not the pleading nor the proof in the instant case."

Keeping in mind the arguments of the learned counsel for the parties, it is trite to examine the relevant provisions of the Act to have better insite on the scheme of the Act. Sec.4(1) of the Act requires Government to publish a preliminary notification declaring its intention to acquire the land in question as also the likely public purpose for which the land is sought to be acquired. This section itself provides for a procedure for publication of notice and even an embargo on the future dealings by the owners of the said property. Sec.5-A of the Act contemplates a right of hearing to any person interested in the land and provides for filing of objections which objections will have to be heard by an authorized Officer by providing an opportunity of hearing to such interested person. Sec.6 of the Act contemplates the making of a declaration as to the requirement of the land for the public purpose. This declaration in the normal course will have to be made after the report of the enquiry officer under section 5-A of the Act is considered by the appropriate Government. This declaration is required to be published in the official gazettee. Sec.9 of the Act contemplates issuance of a notice to the interested person after steps enumerated in Secs.7 and 8 of the Act is completed. Sec.11 contemplates an inquiry and award being made by the Collector and Sec.16 contemplates when an award is made under Section 11, the Collector is entitled to take possession of the land which thereupon vests absolutely with the Government. The only exception to deviate from the above scheme of the Act is found under Section 17 of the Act. Said Sec.17 to the extent required for our consideration is extracted hereinbelow:

" 17. Special powers in cases of urgency –

1. In cases of urgency, whenever the Appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), (take possession of any land needed for a public purpose).

Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

2. Whenever owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, (or the appropriate Government considers it necessary to acquire the immediate possession of any land for the purpose of maintaining any structure or system pertaining to irrigation, water supply, drainage, road communication or electricity), the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the government free from all encumbrances.

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

3. In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested, compensation for the standing crops and trees (if, any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and in case such offer is not accepted, in section 24; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

3A. Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub section (3)-

a. tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and

b. pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2),

and where the Collector is so prevented, the provisions of section 31, sub-

section (2), (except the second proviso thereto), shall apply as they apply to the payment of compensation under that section.

3B. The amount paid or deposited under sub-section (3A), shall be taken into account for determining the amount of compensation, required to be tendered under section 31, and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11, the excess may, unless refunded within three months from the date of the Collector's award, be recovered as an arrear of land revenue.

4. In the case if any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1), or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and if it does so direct, a declaration may be made under section 6 in respect of the land at any time (after the date of the publication of the notification under section 4, sub-section (1)."

A careful perusal of the above Section shows that sub-section (1) of Sec.17 contemplates taking possession of the land in the case of an urgency without making an award but after the publication of Section 9(1) notice and after the expiration of 15 days of publication of Section 9(1) notice. Therefore, it is seen that if the appropriate Government decides that there is an urgency to invoke Section 17(1) in the normal course, Section 4(1) notice will have to be published, Section 6 declaration will have to be made and after completing the procedure contemplated under Sections 7 and 8, 9(1) notice will have to be given and on expiration of 15 days from the date of such notice, the authorities can take possession of the land even before passing of an award.

9. Sub-section (2) of Section 17 contemplates a different type of urgency inasmuch as it should be an unforeseen emergency. Under this Section if the appropriate Government is satisfied that there is such unforeseen emergency the authorities can take possession of the land even without waiting for 15 days period contemplated under Section (1). Therefore, in cases, where Government is satisfied that there is an unforeseen emergency it will have to in the normal course, issue a Section 4(1) notification, hold 5A inquiry, make Section 6 declaration, and issue Section 9(1) notice and possession can be taken immediately thereafter without waiting for the period of 15 days prescribed under Section 9(1) of the Act.

10. Section 17(4) as noticed above provides that in cases where the appropriate Government has come to the conclusion that there exists an urgency or unforeseen emergency as required under sub-sections (1) or (2) of Section 17 it may direct that the provisions of Section 5A shall not apply and if such direction is given then 5A inquiry can be dispensed with and a declaration may be made under Section 6 on publication of 4(1) notification possession can be made.

11. In UNION OF INDIA and ors V. MUKESH HANS ETC. ETC. it has been held as follows:

" 32. A careful perusal of this provision which is an exception to the normal mode of acquisition contemplated under the Act shows mere existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4) that by itself is not sufficient to direct the dispensation of 5A inquiry. It requires an opinion to be formed by the concerned government that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with 5A inquiry which indicates that the Legislature intended that the appropriate government to apply its mind before dispensing with 5A inquiry. It also indicates the mere existence of an urgency under Section 17(1) or unforeseen emergency under Section 17(2) would not by themselves be sufficient for dispensing with 5A inquiry. If that was not the intention of the Legislature then the latter part of sub-section (4) of Section 17 would not have been necessary and the Legislature in Section 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency automatically 5A inquiry will be dispensed with. But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case where there is an urgency contemplated under Section 17(1) and unforeseen emergency contemplated under section 17(2) exists that by itself would not contain the need for dispensing with 5A inquiry. It is possible in a given case the urgency noticed by the appropriate Government under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the

> inquiry under Section 5A but then there is a need for application for mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated under Section 17(1) and (2) of the Act."

12. Certain facts in the instant case are required to be noted and they are that the writ petitioners earlier filed W.P.No.28190 of 1995 complaining acquisition of the land and they obtained stay. The stay continued till the dismissal of the said writ petition. Later, they unsuccessfully filed W.A.No.1761 of 2004 and it came to be disposed of. On 1.8.2005 this court has been called for the file from the respondents-authorities to know whether there is any urgency exists which prompted the authorities to dispense with Sec.5A enquiry. In pursuance of the order, learned Government Pleader for Land Acquisition placed on record the concerned file. Perusal of the file discloses that by the date of the issuance of notification under section 4(1), an application filed by the persons who are residing on road margins was pending. Indeed the Mandal Revenue Officer highlighted the plight of the conditions of the persons who are residing in road margins. There is enough material to indicate that there was urgency to invoke the provisions of Sec.17(4) of the Act and thereby dispensing with Sec.5A inquiry. The question whether the reason is sufficient or not is beyond the scope of judicial review. The judgments of Apex Court in CHAMELI SINGH V. STATE OF U.P. and UNION OF INDIA v. PRAVEEN GUPTA are the authorities for the proposition that when the State proceed to acquire the land for providing house sites to the weaker sections of the society, there is always an element of urgency and that urgency would subsist till the housing problem of those sections of community is solved. The records disclose that the lands in question have been acquired to provide shelter to the persons who have been residing on the road margins and their condition is stated to be very pitiable and pathetic. In the above circumstances, I do not see any substance in the contention of the petitioners that the invocation of urgency cause under Sec.17(4) of the Act by the respondents is motivated and arbitrary. Accordingly this writ petition is devoid of merits and the same is hereby dismissed. No costs.

Dated: 4-08-2005. (B.Seshasayana Reddy, J)

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